

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
EASTERN DIVISION

SANDRA GUNN  
Plaintiff

V.

No. 1:90-CV-222-B-D

CITY OF CORINTH, et al.  
Defendants

**MEMORANDUM OPINION**

This cause comes the court upon the defendants' motion for summary judgment. Upon due consideration of the parties' memoranda and exhibits, the court is ready to rule.

**FACTS**

The plaintiff's brother (hereafter referred to as "the decedent") went to the emergency room at Magnolia Hospital in Corinth, Mississippi, around noon on March 23, 1989. The decedent was intoxicated and disruptive to such an extent that hospital personnel called the city police department to handle the situation. The city police department dispatched officers Wright and Butler, both of whom are defendants herein, who arrested the decedent and transported him to the city jail. The decedent was booked and placed in the drunk tank where he hung himself with his belt at approximately 4:00 p.m.

The decedent had been incarcerated twice in the preceding two weeks for public intoxication. One of the incarcerations lasted for ten days. Nothing occurred during these periods to indicate that the decedent was suicidal. The decedent's mother and sister have both testified that they were unaware that the decedent was suicidal on March 23, 1989. The plaintiff asserts that the decedent had been hospitalized at least three times for psychiatric treatment and had attempted suicide several times in the past. However, there is no evidence that the defendants knew of the decedent's prior hospitalizations and suicide attempts.

Standard operating procedure of the Corinth Police Department required that all persons arrested and booked be searched and all contraband removed, including the detainee's belt. A

booking card was to be filled out listing the detainee's personal items. The plaintiff asserts that this policy was often ignored, to the knowledge and acquiescence of the chief of police, a defendant herein.

The defendants assert that the decedent was quiet and cooperative during his arrest. However, David Robinson, an inmate incarcerated at the same time as decedent, has testified that the decedent was unruly and had to be physically placed in the cell by officers Wright and Butler. Robinson testified that the decedent cursed the officers and told them that he could not take it and had to get out. Robinson described decedent as whimpering, as though he were trying to keep from crying. Robinson testified that throughout the afternoon, the decedent was visibly distraught, pacing in his cell, and continually stating that he just couldn't take it anymore.

The drunk tank, in which the decedent was detained, is located on the top floor of City Hall, while the operation of the jail is conducted from the first floor.<sup>1</sup> Monitoring of the jail was less than perfect. The police department did utilize audio and video equipment to monitor the jail; however, the video monitors only provided a view of the hallways, not the individual cells, and there is some evidence that the audio system was often turned off or turned down low, including at the time of the decedent's death. Furthermore, a shift commander was required to make a cursory check of the jail every hour. Although the defendants assert that the shift commander checked on decedent at 2:00 p.m. on the date of his death, there is testimony from another inmate that no one checked on the jail during the four hours the decedent was incarcerated.

Prior to the decedent's death, the city and county had paid for a joint study concerning each entity's jail facilities. The study indicated that there were significant deficiencies and liabilities inherent in the city's facility (as well as the county's). The study declared that the city's facility failed to meet the basic standards of life safety and recommended the construction of a new joint city/county facility. Despite the results of the study, the city took no action to

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<sup>1</sup> The parties' briefs were not clear as to whether the city hall has three or four floors and as to whether the police department is located on the first floor or in a basement. Nevertheless, the jail was located two to four floors above the police department.

correct the problems identified with its jail.

The plaintiff has asserted a claim under 42 U.S.C. § 1983 for violation of the decedent's Fourteenth Amendment rights to due process on the grounds that the defendants were deliberately indifferent to the decedent's need for medical or other attention and that this indifference resulted from a policy or custom of the city. The plaintiff has further asserted a state law claim for wrongful death.

## **LAW**

On a motion for summary judgment, the movant has the initial burden of showing the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 325, 91 L. Ed. 2d 265, 275 (1986) ("the burden on the moving party may be discharged by 'showing'...that there is an absence of evidence to support the non-moving party's case"). Under Rule 56(e) of the Federal Rules of Civil Procedure, the burden shifts to the non-movant to "go beyond the pleadings and by...affidavits, or by the 'depositions, answers to interrogatories, and admissions on file,' designate 'specific facts showing that there is a genuine issue for trial.'" Celotex Corp., 477 U.S. at 324, 91 L. Ed. 2d at 274. That burden is not discharged by "mere allegations or denials." Fed. R. Civ. P. 56(e). All legitimate factual inferences must be made in favor of the non-movant. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255, 91 L. Ed. 2d 202, 216 (1986). Rule 56(c) mandates the entry of summary judgment "against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex Corp., 477 U.S. at 322, 91 L. Ed. 2d at 273. Before finding that no genuine issue for trial exists, the court must first be satisfied that no reasonable trier of fact could find for the non-movant. Matsushita Elec. Indus. v. Zenith Radio Corp., 475 U.S. 574, 587, 89 L. Ed. 2d 538, 552 (1986).

### **A. Custodial Defendants**

The court turns first to the issue of the liability of officers Wright, Butler, and Moore (the dispatcher on duty at the time of the decedent's death), who are collectively referred to as the "custodial defendants." In Hare v. City of Corinth, a case arising out of a jail suicide that

occurred in the Corinth City Jail approximately four months after the decedent's suicide, the Fifth Circuit Court of Appeals established "that a state jail official's liability for episodic acts or omissions cannot attach unless the official had subjective knowledge of a substantial risk of serious harm to a pretrial detainee but responded with deliberate indifference to that risk." 74 F.3d 633, 650 (5<sup>th</sup> Cir. 1996).<sup>2</sup> Accordingly, to survive summary judgment, the plaintiff must show that the custodial defendants had actual knowledge of the decedent's suicidal tendencies on March 23, 1989. The plaintiff has failed to do so. Although the plaintiff asserts that the decedent had a history of psychiatric hospitalizations and suicide attempts, there is no evidence that any of the defendants knew of the decedent's history. Furthermore, although the plaintiff presents some evidence that the decedent may have shown signs of being suicidal, there is no evidence that the custodial defendants recognized the alleged warning signs. The plaintiff argues that a reasonably competent officer should have known that the decedent was suicidal; however, under the standard set forth in Hare, in the absence of actual knowledge of the decedent's suicidal tendencies, the custodial defendants cannot be held liable. Therefore, the court finds that the defendants' motion for summary judgment should be granted as to the plaintiff's § 1983 claim against officers Wright, Butler, and Moore.

### **B. Chief of Police Johnson**

There is no vicarious liability under § 1983, so Chief Johnson can only be liable if the plaintiff shows that he was personally involved in the arrest and incarceration of the decedent. Barksdale v. King, 699 F.2d 744, 746 (5<sup>th</sup> Cir. 1983); Baskin v. Parker, 602 F.2d 1205, 1208 (5<sup>th</sup> Cir. 1979). There is no evidence that he was. In the absence of personal participation, the court finds that the defendants' motion for summary judgment should be granted as to the plaintiff's § 1983 claim against Chief Johnson.

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<sup>2</sup> Prior to Hare, to establish a prima facie case of deliberate indifference, the plaintiff merely had to show that the defendant knew *or should have known* of the decedent's suicidal tendencies. Burns v. City of Galveston, Tex., 905 F.2d 100, 104 (5<sup>th</sup> Cir. 1990); Lewis v. Parish of Terrebonne, 894 F.2d 142, 146 (5<sup>th</sup> Cir. 1990). The court in Hare effectively removed the concept of *should have known*, so that the correct legal standard is whether the defendant had actual knowledge of the substantial risk of suicide and responded with deliberate indifference. Hare, 74 F.3d at 850.

The plaintiff further asserts that Chief Johnson should be liable for failing to properly train his officers to recognize the suicidal tendencies of detainees. However, the Fifth Circuit has rejected such an argument in Burns v. City of Galveston, Tex.. The court in Burns stated:

Failure to train police officers in screening procedures geared toward detection of detainees with suicidal tendencies may rise to the level of a constitutional deprivation only if the right of detainees to adequate medical care includes an absolute right to psychological screening. We perceive no such right.

Burns, 905 F.2d at 104. The court noted that to unerringly detect suicidal tendencies of pretrial detainees requires the skills of an experienced medical professional with psychological training and held that such ability was beyond that required of an average police officer by the due process clause. Id.

### **C. Municipal Defendants**

Upon due consideration, the court finds that there are genuine issues of material fact as to the plaintiff's § 1983 claim against the City of Corinth, the Board of Aldermen, Edward Bishop, and Jack Holt in their official capacities (hereafter collectively referred to as "the municipal defendants"), including but not limited to, whether the municipal defendants' operation of the jail in the manner described by the plaintiff amounted to deliberate indifference which was directly attributable to the decedent's death. Therefore, the court finds that the defendants' motion for summary judgment should be denied as to the plaintiff's § 1983 claim against the municipal defendants.

### **D. State Law Claims**

To assert a claim under Mississippi law for wrongful death from suicide, the plaintiff must show that the suicide was committed in response to an irresistible impulse proximately resulting from the defendant's intentional wrongful act. Hamilton v. Chaffin, 506 F.2d 904, 908 n. 7 (5<sup>th</sup> Cir. 1975); State ex rel. Richardson v. Edgeworth, 214 So. 2d 579, 587 (Miss. 1968). The plaintiff has failed to provide sufficient evidence to support a prima facie case of wrongful death under Mississippi law. Of particular note, there is no evidence that the defendants intentionally committed a wrongful act which led to the decedent's death. Furthermore, although the failure to remove the decedent's belt may have aided the decedent in committing

suicide, there is no evidence that said failure actually led to the irresistible impulse (i.e., that the decedent was not of suicidal mind until the defendants failed to remove the decedent's belt). Accordingly, the court finds that the defendants' motion for summary judgment should be granted as to the plaintiff's state law claims.

### **CONCLUSION**

For the foregoing reasons, the court finds that the defendants' motion for summary judgment should be granted as to the plaintiff's § 1983 claims against defendants Wright, Butler, Moore and Johnson, and as to the plaintiff's state law claims against all defendants, and denied in all other respects. An order will issue accordingly.

THIS, the \_\_\_\_ day of April, 2001.

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NEAL B. BIGGERS, JR.  
CHIEF JUDGE